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17 Attorneys for *Defendant* **STERLING JEWELERS INC. d/b/a KAY JEWELERS**

18 **UNITED STATES DISTRICT COURT**

19 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

20 IMELDA APARICIO,

Case No.:

21 Plaintiff,

Hon.

22 v.

**NOTICE OF REMOVAL OF
ACTION UNDER 28 U.S.C. § 1441**

23 **STERLING JEWELERS INC. d/b/a KAY
24 JEWELERS; and DOES 1 – 10 inclusive,**

**[FEDERAL QUESTION
JURISDICTION]**

25 Defendants.

26 Superior Court Case No.: 18STLC03857
27 Action Filed: March 8, 2018

TO ALL INTERESTED PARTIES:

28 **PLEASE TAKE NOTICE** that, pursuant to 28 U.S.C. §§ 1331, 1441 and
1446, *defendant* Sterling Jewelers Inc. d/b/a Kay Jewelers (“Sterling”) hereby
removes to this Court the state court action described below.

I. BACKGROUND

29 1. On March 8, 2018, *plaintiff* Imelda Aparicio (“Plaintiff”) commenced an
30 action in the Superior Court of the State of California for the County of Los Angeles

1 (the “Superior Court”) by filing a complaint (the “Complaint”) against Sterling, which
2 initiated *Aparicio v. Sterling*, Case Number 18STLC03857 (the “State Court Action”).
3 True and correct copies of the Summons, Complaint, Civil Case Cover Sheet and the
4 Superior Court’s Standing and General Orders are collectively attached hereto as
5 **Exhibit 1**.

6 2. Sterling was served with a copy of the Complaint on March 9, 2018.
7 Pursuant to 28 U.S.C. § 1446(b) and Federal Rules of Civil Procedure Rule 6, this
8 notice has been timely filed because it is being filed within 30 days of Sterling’s
9 receipt of the Complaint.

10 3. As of the date of this notice, Sterling has not filed an answer or otherwise
11 responded to the Complaint. Accordingly, Sterling is informed and believes that the
12 Summons, Complaint, Civil Case Cover Sheet, and Superior Court Standing and
13 General Orders attached hereto as **Exhibit 1** constitute all process, pleadings, and
14 orders in the State Court Action.

15 4. The Superior Court has scheduled a non-jury trial for September 5, 2019,
16 and an Order to Show Cause hearing for Plaintiff’s failure to file a proof of service for
17 March 11, 2021. It has not otherwise scheduled or conducted any hearings as of the
18 date of this notice. A true and correct copy of the docket in the State Court Action is
19 attached hereto as **Exhibit 2**.

20 5. Pursuant to 28 U.S.C. § 1446(d), Sterling will promptly give written
21 notice of the removal of the State Court Action to all adverse parties and will file a
22 copy of this notice with the Clerk of Los Angeles County Superior Court.

23 **II. VENUE**

24 6. Pursuant to 28 U.S.C. § 1441(a), the United States District Court for the
25 Central District of California – Western Division is the proper venue for the removed
26 State Court Action because it is the judicial district and division in which the State
27 Court Action is pending.

28 /././

1 **III. FEDERAL QUESTION JURISDICTION**

2 7. This action is a civil action over which this Court has original jurisdiction
 3 under 28 U.S.C. § 1331 because the Complaint requires a determination as to whether
 4 Sterling violated “laws...of the United States.” *See* 28 U.S.C. § 1331. Specifically, the
 5 Complaint alleges that Sterling violated the Telephone Consumer Protection Act, 47
 6 U.S.C. § 227, *et seq.* (the “TCPA”). (*See* Compl., ¶¶ 1, 17, 21-26). Plaintiff alleges
 7 that Sterling negligently and/or willfully violated the TCPA by using an automatic
 8 telephone dialing system to place telephone calls in order to collect on a debt, for
 9 which she was charged. (*See* Compl., ¶¶ 12-14, 17). Moreover, while couched as a
 10 claim under California’s Rosenthal Fair Debt Collection Practices Act, Plaintiff’s
 11 Complaint also alleges that Sterling violated provisions of the federal Fair Debt
 12 Collection Practices Act. (*See* Compl., ¶¶ 15-16).

13 8. By virtue of these claims, the resolution of this action will necessarily
 14 require the Court to adjudicate disputed questions of federal law. It follows that
 15 Sterling may remove the State Court Action to this court pursuant to the provisions of
 16 28 U.S.C. § 1441. *See also Mims v. Arrow Fin. Servs., LLC*, 565 U.S. 368, 376 (2012)
 17 (Federal courts have concurrent jurisdiction over private suits arising under the
 18 TCPA); *Beneficial Nat’l Bank v. Anderson*, 539 U.S. 1, 6 (2003) (“[A] civil action
 19 filed in a state court may be removed to federal court if the claim is one ‘arising
 20 under’ federal law”).

21 9. To the extent Plaintiffs’ Complaint states causes of action that are not
 22 based on federal law, this Court has supplemental jurisdiction. This is because any
 23 such claims: (i) arise from the same set of operative facts that underlie Plaintiff’s
 24 TCPA claim; and (ii) relate to the same subject matter; namely, Sterling’s alleged
 25 debt-collection telephone calls to Plaintiff. Accordingly, Plaintiff’s state-law claims
 26 are related to her federal question allegations, thereby forming a part of the “same
 27 case and controversy” pursuant to 28 U.S.C. § 1337(a).

28 /. /

IV. RESERVATION OF RIGHTS

10. Sterling reserves the right to supplement this notice when, and if, additional information becomes available. In addition, Sterling reserves all rights, including, but not limited to, defenses and objections as to venue, personal jurisdiction, and service. The filing of this notice is subject to, and without waiver of, any such defense or objection.

WHEREFORE, Sterling prays that the State Court Action be removed from the Superior Court to this Court and that this Court assume jurisdiction over – and determine – the action on the merits.

DATED: April 6, 2018

McGLINCHEY STAFFORD

By: /s/ Dhruv M. Sharma
DHARUV M. SHARMA
Attorneys for *Defendant* STERLING
JEWELERS INC. d/b/a KAY JEWELERS

DATED: April 6, 2018

**SESSIONS, FISHMAN, NATHAN & ISRAEL,
L.L.P.**

By: Harijot S. Khalsa
HARIJOT S. KHALSA
Attorneys for *Defendant* STERLING
JEWELERS INC. d/b/a KAY JEWELERS

ATTESTATION

Pursuant to Civil Local Rule 5-4.3.4(a)(2)(i), the undersigned attests that he obtained concurrence in the filing of this document from the other signatories.

Dated: April 6, 2018

/s/ Dhruv M. Sharma
Dhruv M. Sharma